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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 315

FRED A. CHAPMAN and ELISE CHAPMAN, *Petitioners*

VS.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari To The United States Court of Appeals For The Tenth Circuit

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REPLY TO BRIEF OF THE UNITED STATES

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Probably it is as hapless as it is true that a litigant who is unfortunate enough to have the United States of America as his opponent is always apprehensive as to the amount of weight which a court will give to statements made by counsel for the Sovereign, whether or not they are supported by evidence or authority. For this reason petitioners pray the Court's indulgence for this short reply to respondent's brief.

* * * *

First, respondent would dispose of the proposition that the lower courts refused to follow Oklahoma law by quoting a conclusion of the lower court that the case was "well and fairly tried" (Br. 6). But if the court thought it was "well and fairly tried" under the rules of some jurisdictions other than Oklahoma, as was the case here, the fundamental error would still be present. It is noted that no defense is made of the lower court's declaration that, notwithstanding the Conformity Act, Federal courts "have done about as they please with reference to following the State rule."

* * * *

The case of *Reynolds vs. Reynolds*, 174 Okla. 443, 445, is cited, and respondent states (Br. 6): "The Supreme Court of Oklahoma has held it not error to limit the number of witnesses on an issue of value." The statement is erroneous. The court did not so hold. The issue of value of land was not even in the case. In a dictum the court there said that a "trial court may limit number of witnesses in proof of *any fact*." The principal issue there was whether a remark of the trial court that plaintiff had presented "sufficient evidence" was error. The question of "limiting the number of witnesses on the main issue" was not in the case. Limitation upon a collateral issue, some particular phase, or "any fact" is a different question, as already pointed out (Pet. Br. 4). *Cope v. State*,

213 P. 753, is the only Oklahoma authority dealing with the issue here presented.

* * * *

There is no basis for the statement that, after the court made a final ruling limiting the number of witnesses and allowing both sides an exception thereto, further proof was "invited by the court" (Br. 6). There was no such invitation. From the very first pre-trial conference of this case up to the time the court made its final ruling at the beginning of the trial, petitioners argued, furnished briefs, and pleaded for the right to introduce more than four witnesses on value. This right was refused at every turn and was definitely and finally denied by the court at the beginning of the trial; petitioners would have been rebuked had they attempted to press their request further after the court had finally ruled on the matter. The references to the record (R. 41, 48) made by respondent (Br. 6) will bear out these statements.

* * * *

Again, respondent states (Br. 8) that "comparable land values had increased about *five per cent* from 1939 to the time of the taking in 1944 (R. 202)." This would be interesting, if correct; but it is not correct. The record (p. 202) shows that land values generally had increased during said period *not* five per cent but *thirty-five* per cent. The increase in value since 1936 would have been much more than thirty-five per cent. The courts take judicial

notice of the fact that real estate had little value during depression years. *Beedle v. Campbell* (8 C. C. A.), 100 F. (2d) 798; *New York Life Ins. Co. v. King* (8 C. C. A.), 93 F. (2d) 347.

* * * *

Respondent asserts (Br. 8) that the "capacity of the land to support cattle was an element of its value—the main issue in the case." This is erroneous. The main issue in the case was the capacity of the land to produce crops. That was the burden of the testimony of all of the witnesses offered by petitioners. The corn produced on the land was fed to the cattle in feed lots during the winter; the cattle themselves were run during the summer on ranch lands located several miles from the land under consideration here. The number of cattle in the few acres comprising the feed lots had no relation to the value of the 3592 acres of land for agricultural purposes.

CONCLUSION

No reply is made to the many unsupported statements of respondent's counsel in asserting that the decision below was correct. It is assumed that a reply to such assertions is unnecessary. Nor are petitioners required to show that they were "adversely affected" by the erroneous rulings. Errors of a court on the trial of a case are considered prejudicial and reversible unless it "*affirmatively*" appears from the "*whole record*" that such errors were not

prejudicial. *McCandless v. United States*, 298 U. S. 342. No such showing has been made here. No such showing could be made under this record.

It is respectfully submitted that the petition should be granted.

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